



Introduction to the 50-State Survey Project:

With a series of 50-state surveys, Ballotpedia seeks to fill in gaps in the public understanding of how administrative agencies function at the state level. Much of administrative state scholarship focuses on the way federal agencies interact with the President of the United States, Congress, and the U.S. Supreme Court. Ballotpedia's survey results allow readers to see how state administrative agencies interact with governors, state legislatures, state courts, and the public at large.

Each of the 50 states has its own state-level Administrative Procedure Act and, of course, its own constitution. Many of these constitutions and statutes have stronger or weaker provisions empowering or reining in the administrative state at the state-level. Ballotpedia has surveyed state-level APAs and constitutions to show how the states stack up in each of the following five areas key to understanding the nature and scope of the administrative state:

- Delegation of legislative authority to other branches
- Executive control of administrative agencies
- Judicial deference to administrative agencies
- Due process and procedural rights
- Agency dynamics

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Delegation of legislative authority to other branches

The nondelegation doctrine is one of five pillars key to understanding the main areas of debate about the nature and scope of the administrative state. The nondelegation doctrine (sometimes hyphenated as non-delegation doctrine) is a principle of constitutional and administrative law that holds that legislative bodies cannot delegate their legislative powers to executive agencies or private entities. In other words, lawmakers cannot allow others to make laws. In the context of the federal government, the doctrine comes from an interpretation of Article I of the United States Constitution and the separation of powers principle.

When examining the nondelegation doctrine on the state level, we focused on the following four questions:

- How, if at all, do states limit legislative delegation to administrative agencies, other branches of government, or to local entities?
- How, if at all, do states limit legislative delegation to agencies? Which states include separation of powers clauses in their constitutions?
- Which states require agencies to follow formal rulemaking procedures?
- Which states have regulatory review bodies and what are the structures of those bodies?

Question 1: Permissible delegations of state legislative power

What we did:

Ballotpedia surveyed all 50 state Administrative Procedure Acts (APAs) and constitutions to see whether the states defined which powers legislatures could delegate to administrative agencies, other branches of government, or to local entities.

Delegate, in this context, means to entrust or hand over authority to another branch of government.

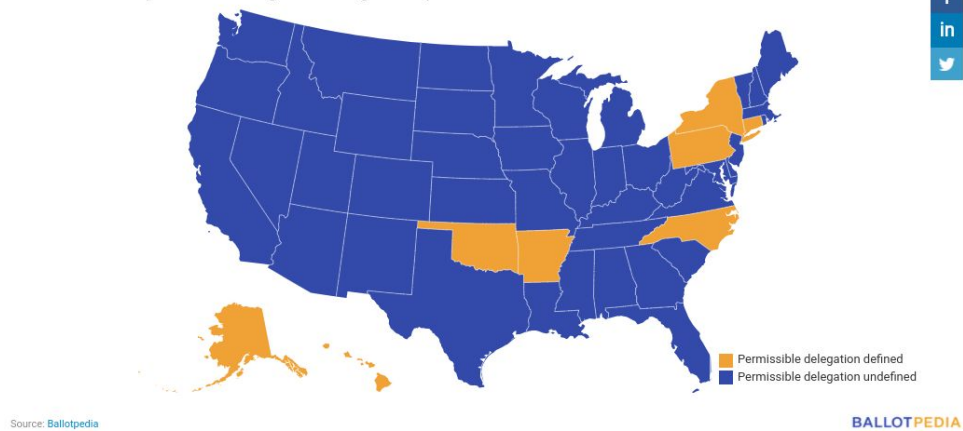
Why we explored this:

At the federal level, Congress sometimes delegates questions requiring subject-matter expertise to agency administrators, often housed in the executive branch, in order to implement the law. Looking for such permissible delegations at the state level reveals how the nondelegation doctrine works. Limiting the delegation of one branch's authority to another—the nondelegation doctrine—is a constitutional principle key to understanding one of the main areas of debate about the nature and scope of the administrative state.

Results:

States have a range of laws and regulations governing the delegation of legislative authority. Some states, for instance, have constitutional separation of powers provisions that divide power between branches of government. Others have specific provisions that describe the types of authority that state legislatures can delegate to other branches of government or to local entities.

States that define permissible delegations of legislative power



Eight states expressly permit legislative delegations of authority to the executive branch, to the judicial branch, or to local governments:

Alaska	Allows the state to delegate taxing power to organized cities
Arkansas	Allows the state to delegate taxing power to local entities for limited reasons
Connecticut	Allows the state government to delegate legislative authority to cities Allows the state legislature to delegate regulatory authority to the executive branch
Hawaii	Allows the state to delegate taxing power to political subdivisions
New York	Allows the state legislature to delegate authority over practice and procedure to the state supreme court or chief administrator of the courts Allows laws that delegate taxing power
North Carolina	Allows the state legislature to delegate authority to the state supreme court to set rules of procedure and practice
Oklahoma	Allows the state legislature to delegate to the state supreme court the authority to divide the state into districts and set the number of judges
Pennsylvania	Allows the state legislature to empower panels or commissions to issue binding factual determinations

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Question 2: State prohibitions on delegation of legislative power to agencies

What we did:

Ballotpedia surveyed all 50 state APAs and constitutions to see what, if any, restrictions states placed on the delegation of legislative authority to agencies or other branches of government as well as which states had separation of powers clauses.

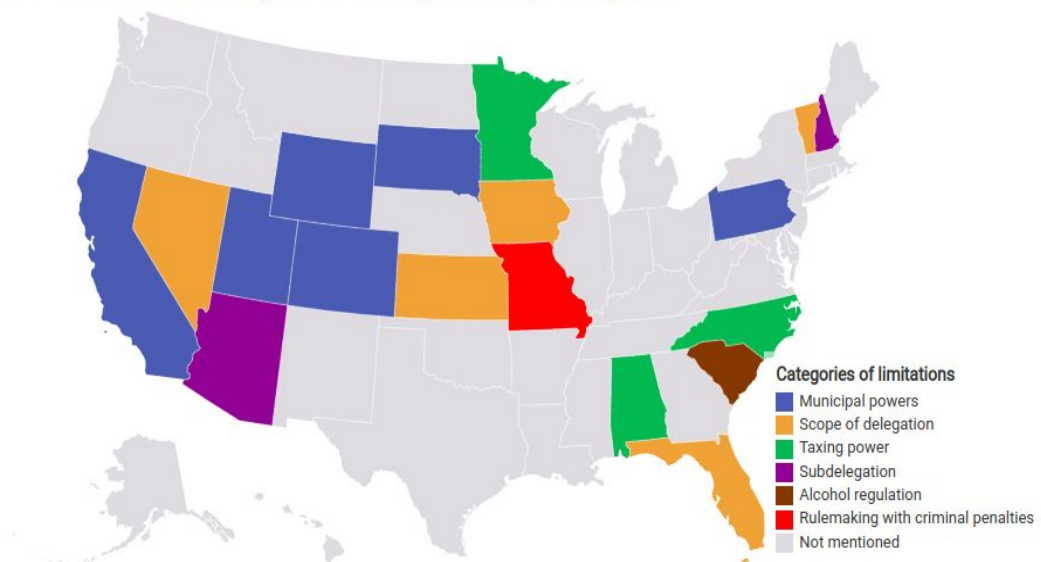
Why we explored this:

Looking for restrictions on such delegations reveals how the nondelegation doctrine works at the state level. Limiting the delegation of one branch's authority to another—the nondelegation doctrine—is a constitutional principle key to understanding one of the main areas of debate about the nature and scope of the administrative state.

An interpretation of the vesting clause of Article I of the U.S. Constitution, coupled with separation of powers principles, forms the theoretical basis of the nondelegation doctrine at the federal level.

Results:

Types of limits state constitutions and APAs place on the delegation of legislative power

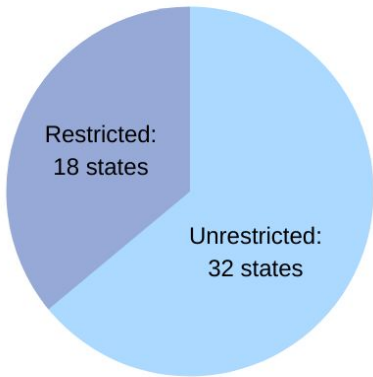


Source: Ballotpedia

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18 states restricted the authority of state legislatures to empower agencies or other governing bodies to make rules about certain subjects



Restrictions on:

State(s):

Delegating the power to make rules with criminal penalties

MS

Delegating the taxing power

AL, NC, MN

Delegating municipal functions

CA, CO, PA, SD, UT, WY

Delegating the power to regulate alcohol

SC

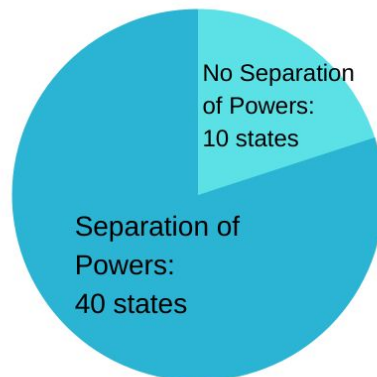
The scope of delegated power

FL, IA, KS, NV, VT

The subdelegation of delegated authority

AZ, NH

40 states, 80%, had separation of powers clauses in their constitutions



Question 3: State formal rulemaking requirements

What We Did:

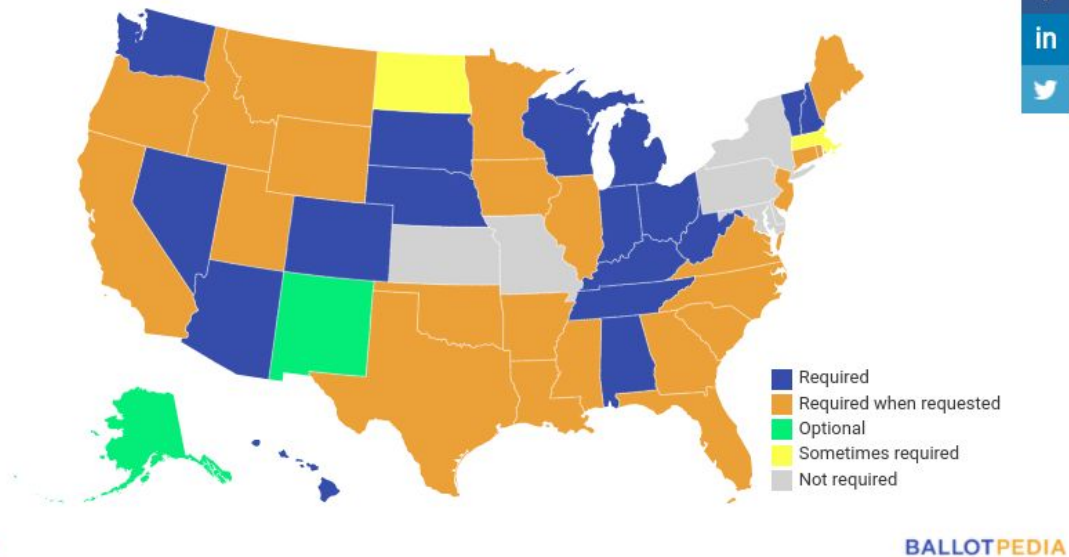
Ballotpedia surveyed all 50 states' (APAs) and constitutions to see whether states required agencies to follow formal rulemaking procedures. The survey defined formal rulemaking as holding a public hearing to accept oral comments on a proposed rule before adopting a final rule.

Why we explored this:

At the federal level, formal rulemaking procedures have agencies consider proposed rules in a trial-like hearing process. Rulemaking procedures provide insight into how the nondelegation doctrine works at the state level. Limiting the delegation of one branch's authority to another—the nondelegation doctrine—is a constitutional principle key to understanding one of the main areas of debate about the nature and scope of the administrative state. Formal rulemaking requirements are a way that states may limit how agencies use delegated authority.

Results:

States that require agencies to follow formal rulemaking procedures



Formal rulemaking conditions among the state APAs:

Rulemaking Condition:

State(s):

Required:

AL, AZ, CO, HI, IN, KY, MI, NE, NV, NH, OH, SD, TN, VT, WA, WV, WI

Required if requested:

AR, CA, CT, FL, GA, ID, IL, IA, LA, ME, MN, MO, MS, NJ, OK, OR, RI, SC, TX, UT, VA, WY

Optional:

AK, NM

Sometimes required:

ND - requires formal rulemaking for major rules

MA - requires formal rulemaking for rules that imposed fines or prison time for violators

None mentioned:

DE, KS, MD, MO, NY, PA

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Question 4: States with regulatory review bodies

What We Did:

Ballotpedia surveyed all 50 state Administrative Procedure Acts and constitutions to see which states had regulatory review bodies. A regulatory review body is a specific legislative committee or executive agency that reviews new regulations before they go into effect.

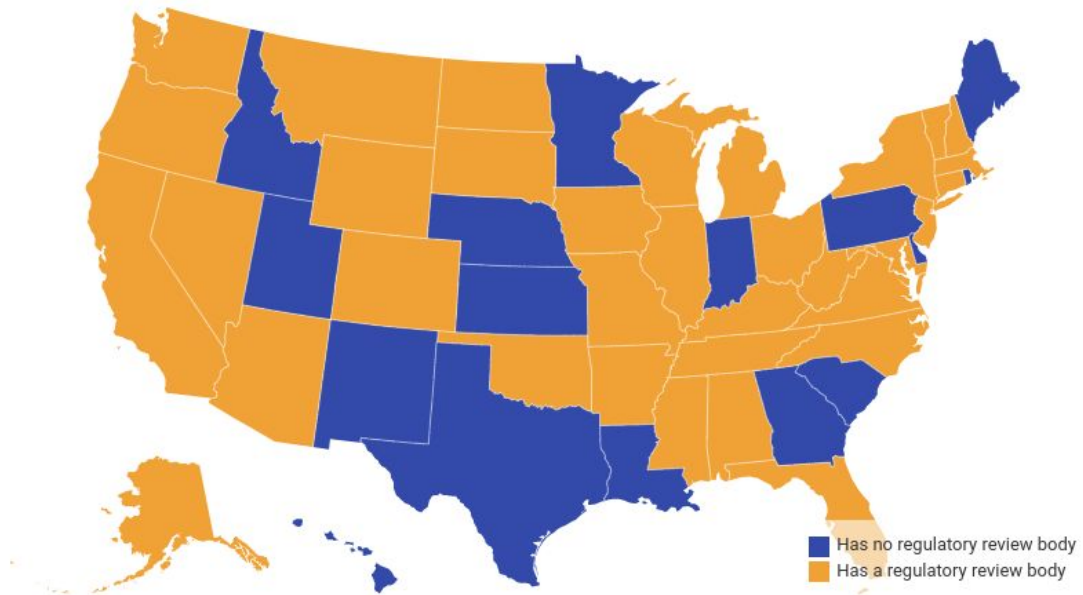
For this survey, Ballotpedia counted as regulatory review bodies only dedicated entities such as joint committees on administrative rules (JCARs). In some states, legislative committees with control over the same subject matter as a given regulation have the power to review that regulation. This project does not include such states among those with special regulatory review organizations.

Why we explored this:

Regulatory review bodies provide insight into how the nondelegation doctrine works at the state level. The nondelegation doctrine is a constitutional principle key to understanding one of the main areas of debate about the nature and scope of the administrative state and refers to limiting the delegation of one branch's authority to another. Regulatory review bodies oversee the exercise of delegated authority.

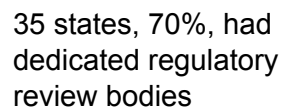
Results:

States with APAs or constitutions that provide for a regulatory review body



Source: Ballotpedia

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Type of regulatory review body:

Legislative Committees:

Executive Agencies:

Legislative Agency:

State(s):

AL, AK, AZ, AR, CT, FL, IL, IA, KY, MD, MA,
MI, MS, MO, MN, NE, NV, NH, NY, ND, OH,
OK, OR, SD, TN, VT, VA, WA, WV, WI

CA, CO, NJ, NC

WY